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THE PEASANT'S PRE-EMPTION RIGHT

AN ABORTIVE REFORM OF THE MACEDONIAN EMPERORS

By G. OSTROGORSKY

The struggle which the Byzantine government had to wage in the tenth century to protect small freeholders against the landed aristocracy represents a most interesting and important phase in the internal development of the Byzantine State. It can be said without exaggeration that the issue of the struggle determined the very fate of the Empire. The history of this stubborn, dramatic conflict has been outlined more than once.¹ My intention is not to narrate it again, but to illustrate by a few concrete examples the causes which prevented the Byzantine government from effectively safeguarding the smallholder.

The system of land tenure by free peasant proprietors and *stratiotai*—soldiers settled in the themes—formed the mainstay of the Byzantine Empire from the time of its recovery in the seventh century, as well as its principal source of both internal strength and external power. Naturally, the imperial government intervened in favour of the smallholder when it became clear that peasant and stratiote property was being rapidly absorbed by big landholders, with their former owners becoming serfs on the estates of lay landowners and monasteries. In protecting the smallholder against the encroachments of the feudal landed aristocracy, the State endeavoured to safeguard its soldiers and its best taxpayers, as well as its actual existence; for the development of the centrifugal forces of feudalism constituted a menace to the centralized and autocratic power of the Byzantine emperors.

The novel of Romanus I Lecapenus of April, 922, opened a long series of legislative enactments by which the Byzantine government sought to protect the smallholder. First of all it granted the peasants the right of pre-emption (προτίμησης) as purchasers of real estate alienated by their neighbours. Peasant holdings had to be offered for sale first to neighbouring peasants in a strictly determined order of preference, while outsiders could participate in the deal only if the neighbours refused to buy. Furthermore, the novel of Romanus Lecapenus altogether forbade the 'powerful' (οἱ δυνατοί) to acquire the lands of poor peasants (οἱ πένητες).² This prohibition was repeated in the novel of Romanus Lecapenus of 934 which sharply criticized the cupidity of the powerful, and decreed the restitution to their former owners of illegally acquired estates.³ The legislative enactments of Constantine XII Porphyrogenitus,⁴ Romanus II,⁵ and Basil II⁶—whose measures against the feudal landed aristocracy were particularly drastic—re-iterated with growing severity and determination the same regulations, and contained similar and increasingly bitter and scornful complaints and denunciations. But the very fact that Byzantine emperors had to re-iterate their orders again and again shows clearly enough that their decrees failed to achieve the desired effect. At the best they delayed and impeded, but they never actually checked, the expansion of big landholding. After the death of Basil II, legislation favouring the small proprietor was discontinued. The central authority had been forced to capitulate. In the end the triumph of the feudal aristocracy was complete.

It cannot be doubted that the victory of the feudal aristocracy and the ensuing decline in free peasant land-tenure were the primary causes of downfall of the Byzantine State. Therefore the reasons underlying the failure of the imperial measures to safeguard the smallholder are of the greatest interest to a student of Byzantium.

¹ Cf. the classical study of V. G. Vasilievsky, 'Materials for the Internal History of the Byzantine State' (in Russian), *Trudy* IV (1930), 250, 331, and among more recent publications, G. Ostrogorsky, 'Agrarian Conditions in the Byzantine Empire,' *The Cambridge Economic History I* (1942), 204 ff., and *Geschichte des byzantinischen Staates* (1940), 192 ff.

² J. and P. Zepos, *Jus Graecoromanum I*, 198 ff.

³ *Ibid.*, 205 ff.

⁴ *Ibid.*, 214 ff., 222 ff., 239.

⁵ *Ibid.*, 240 ff., 243 ff.

⁶ *Ibid.*, 262 ff.

Historians have already considered these causes, pointing out the distressing position of a peasantry crushed by taxation; the impetus and ever-growing force of expansion of large land-tenure both lay and ecclesiastical; the common class-interests which bound together, on the one hand, landowners—against whom the imperial decrees were directed—and, on the other, officials and judges responsible, in actual fact, for enforcing or disregarding these decrees.⁷ The purpose of the present article is to illustrate and corroborate these general conclusions by a few specific instances drawn from documents contemporary with the agrarian legislation of the Macedonian dynasty. Imperial novels constantly and bitterly denounce officials and judges for variously and frequently circumventing and evading the law, but naturally yield no information about the exact nature of their malpractices. The latter can only be known from documents which mirror the course of day-to-day life.

We have at our disposal only a very limited number of documents dating from the time when the agrarian legislation of the Macedonian dynasty was in force. The important new edition of the Acts of the Laura Monastery comprises a number, some of which had remained hitherto unpublished.⁸ The most ancient documents in the archives of the Laura concern the monastery of St. Andrew, at Peristerae, which later came to be the property of the Laura. We will limit our article to a study of the documents concerning this monastery. Although unfortunately few in number, they are most illuminating; moreover, as will soon be seen, one of them touches directly on the problems raised by the agrarian legislation of the Macedonian dynasty.

* * *

The monastery of St. Andrew at Peristerae, in the hills, 20 km. east of Saloniki, was founded in 871 by the famous hermit Euthymius.⁹ However, as an independent community, it existed for less than a century. Later it was handed over by its abbot Stephen to the Laura of St. Athanasius. The *typikon* of Athanasius shows that the transfer was based on an order contained in a chrysobull of Nicephorus Phocas, confirmed later by another chrysobull of John Zimisces.¹⁰ Neither of the two chrysobulls has come down to us, but yet another one of Nicephorus Phocas to the Laura, dated May, 964, is still in existence;¹¹ in it the Emperor makes a reference to his two previous chrysobulls and confirms his earlier donations of real and movable estate to the Laura: these donations included evidently the handing over of the monastery at Peristerae to the Laura. Consequently, the chrysobull regarding the transfer of the former must have been issued between 16th August, 963—the date of the accession of Nicephorus Phocas—and May, 964. This is consistent with the fact pointed out by Dölger¹² that, according to the Life of Athanasius, the transfer took place before Nicephorus set out on his Syrian campaign in spring, 964.¹³

It appears from the *typikon* of Athanasius that the transfer was brought about by the moral decadence of the monastery at Peristerae.¹⁴ At all events, it was not economic decay that caused the latter to forfeit its independence. On the contrary, economically the Peristerae monastery was far from declining; for the Laura took it over, together with the estate of Tsekhlianae, which was apparently its property, and 100 *zeugaratoi*,¹⁵ i.e. 100 peasant homesteads in the upper census category.

⁷ Cf. V. G. Vasilievsky, op. cit.; G. Ostrogorsky, op. cit.

⁸ G. Rouillard et P. Collomp, *Actes de Laura* I (897–1178), avec un album de 30 planches (Paris, 1937). (Further cited as *Laura*.)

⁹ K. Lake, *The Early Days of Monasticism on Mount Athos* (Oxford, 1909), 49 ff., 53 ff.; P. Uspensky, *A History of Athos* (in Russian) III (Kiev, 1877), 32. From the point of view of archaeology the church of Peristerae was studied by the Dane, K. F. Kinch, *Festschrift til J. L. Ussing* (Copenhagen, 1900), 144 ff. Cf. *Byz. Zeitschr.* 11 (1902), 273, 663 ff.

¹⁰ Ph. Meyer, *Die Haupturkunden für die Geschichte*

der Athosklöster (Leipzig, 1894), 119–121; Dölger, *Reg.* 704 and 744.

¹¹ *Laura*, No. 6.

¹² Dölger, *Reg.* 704.

¹³ Cf. G. Schlumberger, *Nicéphore Phocas* (Paris, 1923), 340 ff.

¹⁴ Ph. Meyer, op. cit., 120, 15 ff.; K. Lake, op. cit., 53.

¹⁵ Dölger, *Reg.* 704. Later, in the chrysobull of Alexis Comnenus of 1109, (*Laura*, No. 53), Peristerae is mentioned as an estate (προόστειον) belonging to the Laura, and curiously enough it is again mentioned in connection with Tsekhlianae: τῶν δύο προαστείων τῶν Περιστερῶν καὶ τῶν Τσεχλιάνων.

The archives of the Peristerae monastery naturally went over also to the Laura. This explains why several and, moreover, the oldest documents in the archives of the Laura, actually belong to the Peristerae monastery relating to the years when it was still an independent entity. These documents throw some light on the ways in which the Peristerae monastery achieved prosperity and expanded its land-holdings at a time when the laws of the Byzantine State were opposed to such expansion. Furthermore, these documents enable us to answer a question of general historical interest: namely, why did the measures devised by the Byzantine government to check the growth of large landed estates fail to achieve their purpose?

We can disregard the first and most ancient document of the Laura collection¹⁶ concerning the sale by a pious family of its property situated in the town of Saloniki to Euthymius, abbot of the monastery at Peristerae; since this document goes back to 897, it is anterior to the legislation favouring the smallholder. The second,¹⁷ on the other hand, is of outstanding interest to us since it deals with so important an element of this legislation as the right of *protimesis*, i.e. the preference granted to smallholders in buying their neighbours' real estate: moreover, it provides a most interesting example of how this right could be dodged.

The document is the verdict of Samonas, *spatharocandidatus*, *asekretes*, and judge of Saloniki, and concerns property partly sold and partly donated by a certain cleric, David, to abbot Stephen. This abbot Stephen referred to as monk and abbot only once, at the outset of the document, and elsewhere more humbly designated simply as monk, is certainly none other than the Stephen mentioned above, the last abbot of Peristerae, who handed over his monastery to the Laura in 963 or 964, as is noted in a later text on the back of the document.¹⁸ The editors of the Laura documents failed to make this natural identification owing to a mistake in their dating of the document.¹⁹ It is dated November of the 11th indiction, without mention of the year. Since it refers to the right of preferential purchase in the sense first given to it in the famous novel of Romanus Lecapenus of April, 922, the editors rightly infer that the document could not be earlier than the novel; but it is not at all clear why they should categorically and peremptorily ascribe it to November, 922. Obviously, the date of the novel of Romanus regarding the right of preferential purchase supplies solely the *terminus post quem*. Our document could not have been drafted before 922, but it could have been drawn up in later years, at any time during the period when the peasants' right of pre-emption remained in force. This was pointed out by Dölger in his excellent study on the Laura collection.²⁰ With great insight Dölger indicated that the reasonings of the judge Samonas imply that he was acquainted not merely with the 922 novel of Romanus, but also with Constantine's of 947. Therefore Dölger proposes to regard November, 952, which corresponds to the 11th indiction as the *terminus post quem*. However, Dölger did not recognize in Stephen, monk and abbot—and buyer of the estates—the abbot of Peristerae who resigned his monastery to Athanasius of Laura in 963–4. Yet all objections to this natural identification are cleared away with the removal of the editors' erroneous dating; and this identification best explains how our document found its way into the archives of the Laura. Consequently we may assume that November, 952, is not merely the *terminus post quem*, as suggested by Dölger, but is the actual and indisputable date of our document's promulgation; for by 967–8, the year in which falls the next 11th indiction, the Peristerae monastery had ceased to exist, having become subordinate to the Laura of Athanasius.²¹ So we come to the conclusion that document No. 2 in the edition of G. Rouillard and P. Collomp was issued in November, 952: like documents

¹⁶ Laura, No. 1.

¹⁷ Laura, No. 2.

¹⁸ Laura, p. 5.

¹⁹ Cf. editors' notes, pp. xxvii and 5.

²⁰ F. Dölger, 'Zur Textgestaltung der Laura-Urkunden und zu ihrer geschichtlichen Auswertung', *Byz. Zeitschr.* xxxix (1939), 31 ff.

²¹ Moreover, since the novel of Nicephorus

Phocas enacted in September, 967 (*Zepos* 1, 253 ff.; cf. Dölger, *Reg.* 712) decreed that peasants should buy from peasants and landowners from landowners, the judge needed no longer have taken into consideration the right of preferential purchase in its former meaning; for this right was restored only with the promulgation of the 996 novel of Basil II (*Jus* 1, 262 ff.).

Nos. 1 and 3, it concerns the Peristerae monastery, from whose archives they were all transferred to those of the Laura monastery—possibly with some other ancient documents.

In substance, the lawsuit examined by Samonas was as follows: David, a cleric, had inherited from his mother Theodora a brickyard (ἐργαστήριον πρὸς κεράμων κατασκευὴν ἐπιτήδειον) as well as plots of land, together with their farm-buildings χωραφιαίων τόπων καὶ τῆς καθέδρας αὐτῶν, which were near the coast.²² He sold the brickyard for three gold coins to abbot Stephen, to whom he also donated the fields and farm-buildings. In order to explain and justify this somewhat strange action, the judge insistently stresses that the donated property was the dowry of David's mother. Nevertheless, some of David's neighbours objected to the transaction, and one of them, the *drungarius* John, even attempted forcibly to evict 'monk' Stephen from his newly acquired estates. This gave rise to the lawsuit. Yet, when John and Stephen appeared in court, the sole argument which John could put forward, according to the judge, was that he had endeavoured to uphold the Sovereign's rights, which—again according to the judge—would have brought only great ruin to the neighbouring poor. Their tender-hearted champion gives no reasons for his view, nor does he make in this connection any reference to the right of pre-emption which the neighbours of the cleric David seem to have invoked. For at any rate their protest against the transaction between David and abbot Stephen was evidently motivated by a reference to the neighbours' right of pre-emption as recognized by the imperial laws: it was probably in this sense that John claimed to contend for the Sovereign's rights. Our judge mentions the right of pre-emption only in his next sentence, which is also his verdict on the dispute, and is worth quoting in full. 'Since there were serfs of the powerful on three sides and no poor man could substantiate his preferential right to the purchase of the aforesaid brickyard alone, it is ruled that monk Stephen has lawfully acquired it, together with the gift of the other property herein described.'²³ Furthermore, according to the judge, the four-month²⁴ period (for claiming the right of pre-emption) having elapsed, the latter could no longer be invoked: in so far as the right of pre-emption had lapsed and the plaintiffs had no other grounds for seeking to invalidate the deal, their complaint was completely without foundation.²⁵

It is worth noting that the action was brought not on the initiative of the peasants, for whom and in whose favour the law established the right of pre-emption, but on that of the 'powerful man' John, a former *drungarius*. Apparently, the peasants in their oppressed condition could not uphold their rights, and had it not been for ex-*drungarius* John, who intervened for some reasons of his own, there would have been no lawsuit whatever. Yet, even court proceedings proved of no avail. Although the judge used legal arguments and quoted the law, he was actually contending not for justice but for the interests of that party to which he was bound by common interests. As I have said elsewhere, 'the great landowners and the officials formed, so to speak, a caste.'²⁶ The lawsuit which we have just examined wholly confirms this view. Moreover, it provides an excellent and vivid illustration of the words of Emperor Constantine Porphyrogenitus that, influenced by the powerful, 'judges often return verdicts based not on the law but made to suit circumstances (κατ' οἰκονομίαν), sometimes in one way, sometimes in another.'²⁷ Judge Samonas, too, decided κατ' οἰκονομίαν. Let us examine his arguments more closely. On three sides (!)

²² It is preferable to read γειτονούντων instead of γειτονούσης since it appears that not only the building but also the plots which it serviced were near the sea coast. Cf. *Viz. Vrem.* v (1898), 483.

²³ *Laura*, No. 2, 21–5: ἐπεὶ οὖν ἐκ τριῶν πλευρῶν τινες ἐδείκνυντο τῶν δυνατῶν προσκαθήμενοι, δίκαιον δὲ προτιμήσεως οὐδέτερος πένης εὕρισκεν πρὸς τὸ δηλωθὲν κεραμεῖον μόνον ἐξαγοράσαι, μετὰ τῆς τῶν ἄλλων τῶν ἀναγκαζομένων δωρεᾶς ἐκρίθη νομίμως καὶ τὴν τούτου [for τούτων] ἐξώνησιν τὸν μοναχὸν ποιήσασθαι Στέφανον.

²⁴ Instead of τετραμεροῦς one should read τετραμηνοῦς, as pointed out by Dölger, *op. cit.*, 32, whose emendations are also accepted elsewhere.

²⁵ *Laura*, No. 2, 26–30.

²⁶ *Camb. Economic Hist.* 1, 207. It may be noted that our judge Samonas belonged to the 'powerful' by his official position as well as by birth. He was undoubtedly—the rarity of the name justifies this presumption—a descendant, perhaps a grandson of the famous patrician Samonas, *protovestiarus*, then *parakoimomenus* of the Emperor Leo VI. For him, cf. Kougeas, *Byz.-Neugr. Jahrb.* v (1927), 202 f.

²⁷ *Jus* 1, 215.

the disputed property bordered on lands worked by the serfs of landlords, and John, a former *drungarius*, may presumably have been one of them. Since the land belonged not to peasants but to the 'powerful', Samonas excluded them from exercising the right of pre-emption, without further ado, although in their capacity as neighbours they could lay better claim to the property than the monastery at Peristerae, which was in no way a neighbour of the seller, whose holdings were by the coast while the monastery stood a good 20 km. from the sea.²⁸

So much for the three sides. What of the fourth about which judge Samonas maintains a discreet silence? Obviously on this side, the property bordered on holdings of the poor, cursorily alluded to by the judge, i.e. on those of free peasant smallholders to whom the imperial legislation granted the right of pre-emption whenever their neighbours alienated their land. That such were the facts, and that peasants entitled to preferential purchase existed is pretty certain, since Samonas himself does not deny it. But . . . he asserts that none of them could prove his preferential right to buy the brickyard *alone*. How are we to understand this sophistry? Dölger rightly argues²⁹ that the judge took advantage of provision in the 947 novel of Constantine VII regarding estates forming a single whole (ἰδιοσύστατον):³⁰ buyers even when enjoying the right of pre-emption had to buy the whole of such a property or relinquish their claim to it; they were allowed a four months' time limit to collect the money needed for the purchase.³¹

Yet it is not so easy to understand the train of thought of the resourceful judge. Dölger presumes that the peasants' right of pre-emption extended to the brickyard alone and not to the other property alienated by David because the other plots may not have bordered on theirs; so the judge dismissed their claim on the grounds that David's property formed an economic unit and that, in pursuance of the novel of 947, either the whole or none of the property was subject to the right of pre-emption.³² Of course such an argument would have been a misinterpretation of the law on the right of pre-emption and would have made its application impossible in practice whenever two non-adjacent properties were being sold simultaneously. By declaring these properties an economic unit one could have denied the neighbours of the first property their right of pre-emption on the grounds that their holdings were not contiguous to the second, while similarly denying the rights of the neighbours of the second property because their plots were not contiguous to the first. But the course taken by our judge was, apparently, still more off-hand. There is nothing to show that the peasants' holdings bordered on the brickyard alone, or that their claims were limited to it; the judge states nothing to this effect, and he would have probably not omitted a point so advantageous to his client. It was not a matter of the peasants' wishes or of the validity of their claims, but of legal interpretation by a cunning judge. He simply excluded those plots which David had not sold but donated to abbot Stephen, and, treating them as a gift, deemed it unnecessary to raise the question whether the right of pre-emption was applicable to them. This he could do by availing himself of a clause in the 922 novel of Romanus I, according to which the right of pre-emption is applicable in the case of sale or lease, but 'that real estate given in dowry, or as betrothal gift, or donated as simple gift, or in case of death, or bequeathed by testament, or bartered, can be acquired by both neighbours and outsiders'.³³ As a matter of fact, the novel goes on to explain that similar transactions must not be faked to screen actual sales and purchases—hence the insistence with which our judge emphasizes that the property donated by cleric David to abbot Stephen had been received in dower by his mother, inherited from her,

²⁸ Cf. map in K. Lake, *op. cit.*

²⁹ F. Dölger, *op. cit.*, *Byz. Zeitschr.* xxxix (1939), 32.

³⁰ Or ἰδιοστάτον more frequently in other sources. Cf. provisions regarding such estates in *Treatise on Taxation*, ed. by W. Ashburner, *JHS* xxxv (1915), sections 1, 5, 6 = ed. F. Dölger, *Beiträge zur Gesch. der byz. Finanzverwaltung* (1927), 114, 27; 116, 1, 19, 37; 117, 1, 17. Commentary: F. Dölger, *op. cit.*, 138; G. Ostrogorsky, 'Die

ländliche Steuergemeinde des byz. Reiches im X Jh.', *Vierteljahrschr. f. Sozial- und Wirtschaftsgesch.* xx (1927), 21 ff.

³¹ *Jus* I, 217. A comparison of Samonas's argumentation and this provision in the 947 novel of Constantine VII shows that Samonas was acquainted with the novel of 947, as stated above.

³² F. Dölger, *op. cit.*, *Byz. Zeitschr.* xxxix (1939), 33.

³³ *Jus* I, 203.

and donated to abbot Stephen in good faith. In this way, the judge deemed himself authorized on legal grounds to exclude from the proceedings the plots David had given, not sold, to abbot Stephen.³⁴ There remained the brickyard sold for the very low price of three *nomismata*. Here Samonas took advantage of the above-mentioned clause of the 947 novel regarding properties forming a whole, and, without stating his reasons, applied it to David's brickyard and his plots. In so far as it was admitted that the brickyard sold formed a whole with the donated plots and, consequently, could not be sold apart from them, it naturally followed that the peasants were 'unable to substantiate their pre-emption right to purchase the brickyard alone'. The obvious course was to sanction the purchase of the brickworks by abbot Stephen; for he alone could acquire them, 'together with the gift of the other plots herein described'.

Thus a very simple method was devised to evade the law on peasants' preferential rights. Part of an alienated property need simply be 'donated', and then the donated part and that offered for sale declared a single unit, for the entire property to pass—despite the law of preferential purchase—into the hands of the recipient of the 'donation'. It can be surmised that others apart from abbot Stephen and judge Samonas may also have hit upon the method.

So the greed of Byzantine landowners, both secular and ecclesiastical, was breaking down all legal barriers, and the good intentions of the legislator were being wrecked by the resourcefulness and cunning of Byzantine judges who sided invariably with the 'powerful'. In vain, the government endeavoured to foresee and forestall attempts to evade the laws it enacted: the 'powerful' and the judges excelled it in foresight. In the wording of the 934 novel of Romanus Lecapenus 'wickedness is a thing of many tricks and shifts, and cupidity is especially ingenious in eluding the control of laws and proclamations'.³⁵ The case we have examined, disclosing Samonas's methods of administering justice, brings home to us the even more forceful words of another Byzantine Emperor: 'We must beware lest we send upon the unfortunate poor the calamity of law-officers, more merciless than famine itself.'³⁶

* * *

Corruption among judges was not the sole factor helping landowners to increase their holdings in contravention to the law which granted peasants a preferential right to acquire alienated real estate. It happened too, that the government itself issued orders, which contradicted the very laws it had enacted. Document No. 3 of the Laura collection dated August, 941, shows Thomas, imperial *protospatharius*, *asekretes*, *epoptes*, and *anagrapheus* of Saloniki, selling two sizable estates totalling 1,800 *modii* (approx. 150 hectares) of escheated State lands on the Cassandra peninsula to the monastery at Peristerae represented by abbot Euthymius. In document No. 4, also dated August, 941, the same Thomas sells another 100 *modii* of escheated land on the Cassandra peninsula to a certain Nicholas, son of Agathon.

We know, however, that the 922 novel of Romanus Lecapenus expressly stated that the peasants' preferential right of purchase was also applicable to escheated land when it was being sold. 'Even when property other than the plots of the poor is sold, or when the State sells so-called escheated plots (κλασματικοὶ τόποι) or other estates belonging to

³⁴ Actually, this was in flagrant contradiction with another law, namely a provision of the 934 novel of Romanus I, which reads (*Jus* I, 213): 'We do not wish that the good measures that we have decided upon should suffer any infringement under the pretext of donations and endowments made to holy monasteries by those who have entered or intend to enter them as monks. Monasteries will derive sufficient benefit if they receive an equitable money-price in lieu of the land or real estate in every case where the bestowal is really made for the salvation of the soul and not fraudulently to conceal a sale.

We consider that by granting the right of pre-emption also in the case of endowments made to monasteries, we enact a rule beneficial not only to the poor but also to the sacred houses, because their inhabitants will thus be free from disputes, lawsuits and discords, from ignoble and improper cupidity, and it becomes them, being after all creatures of the flesh, to avoid and not to seek occasions of falling.' Cf. V. G. Vasilievsky, *op. cit.*, 279. Cf. also the novel of Constantine VII of 947, *Jus* I, 216.

³⁵ *Jus* I, 208.

³⁶ Nov. Romani II: *Jus* I, 242.

State domain, in that case, too, peasant proprietors shall have preference (προτιμάσθωσαν); only if they refuse of their own accord, may the powerful enter into the transactions.' ³⁷ The unambiguous meaning of the law was that Crown lands for sale were to be offered first to peasants and could be sold to others only if the peasants refused to buy them. Yet both our documents show that the official who effected the sale on the personal orders of the Emperors offered the land to any inhabitant of the theme of Saloniki desirous of buying it. The wording of both acts is practically identical, and in the opening sentences of both, the *epoptes* Thomas announces in practically the same terms that he carries out the transaction 'upon the divine order of our pious, God-anointed, great and peace-loving Emperors Romanus, Constantine, Stephen, and Constantine, who ordered him to sell land on the Pallene peninsula, known also as Cassandra, to inhabitants of the theme of Thessalonica desirous of purchasing it (τοῖς βουλομένοις οἰκήτορσι), because the land was escheat (ὡς κλασματικῆς αὐτῆς τυγχανούσης). ³⁸

Why the land was offered to all and sundry desirous of purchasing it remains an open question. Does it mean that it had been previously offered to peasants entitled to pre-emption and they had refused to buy it, or had it not been offered to them at all? The latter seems the more likely; for, had it been otherwise, our documents would have probably contained something to the effect that, in accordance with the law, the land had been first offered to peasants, whereas our documents are silent on this point and contain no reference whatever to the right of pre-emption.

Escheated land (κλασματική γῆ or simply κλάσμα, in later documents ἐξάλειμμα, ἐξολειμματική γῆ) was a common phenomenon in Byzantium. The nature and origin of escheats is best explained in the well-known tenth-century *Treatise on Taxation*, quoted earlier. ³⁹ If enemy invasion or some other calamity reduced proprietors to desert their lands, their neighbours became, according to the rules of corporate liability, responsible for paying their share of taxes; *de facto* they became the owners of the deserted plots. But often the neighbours were not in a position to shoulder the burden of additional taxation, and were prepared themselves to abandon their own property and flee anywhere to escape from the burden of additional taxes. Then the *epoptes*, in his capacity of fiscal authority, could exempt the deserted lands from tax liabilities: in other words, he exempted the neighbours from paying an additional tax (ἀλληλέγγυον); in this way he kept them from fleeing and so causing further losses to the revenue. If the fugitives failed to return, and no one else took possession of their plots, thus becoming liable for the incumbent taxes, then, after a period of thirty years, the deserted lands were deemed escheat and fell in to the State, which retained, sold, leased or donated them at its discretion.

Commenting elsewhere on the explanations of the *Treatise on Taxation* and comparing them with the provisions of the novel of Romanus Lecapenus on the preferential right of peasants to purchase escheated land sold by the State, we expressed the view that peasants were unlikely to take advantage of their rights to any considerable extent. 'It can hardly be imagined that a peasant, unable to take possession of a plot, or whose ancestors had been unable to do so, merely by assuming the obligation to pay the taxes due, should have wished to buy it, or even rent it, thirty years later. Undoubtedly this can have happened only very occasionally. On the other hand, when escheated property was donated, peasants would be the least likely recipients of such liberalities. Therefore it can be assumed with considerable certainty that, unless escheated lands remained part of the Crown domain, they fell eventually into the hands of the "powerful". Thus escheats too, led to the disintegration of peasant communities and to the absorption of poor peasants' property by those in power.' ⁴⁰

Both Laura documents dealing with the sale of escheated estates strikingly confirm this opinion, and supply a vivid illustration of our theoretical conclusions. Whether the

³⁷ *Jus* 1, 203.

³⁸ *Laura*, No. 3, 2-8; No. 4, 2-6.

³⁹ In particular, sections 5 and 12, ed. Ashburner = Dölger, *Beiträge* 116 and 118 f.

⁴⁰ G. Ostrogorsky, 'Die ländliche Steuergemeinde des byzantinischen Reiches im X. Jahrh.', *Vierteljahrschr. f. Sozial- und Wirtschaftsgesch.* xx (1927), 76 ff.

peasants refused to purchase the estates or, as seems more likely, were not given the option, the fact remains that, according to our documents, they did not take advantage of their rights of preferential purchase. Moreover, the same Romanus Lecapenus who, in 922, wished to secure for the peasants a preferential right to purchase escheated lands, twenty years later ordered his officials to offer such lands for sale to any one in a given theme wishing to buy them.

As a result, the monastery at Peristerae bought a large estate, while another more modest purchase was made by a certain Nicholas, son of Agathon, who acquired 100 *modii*. The text gives no clue as to the identity of this buyer. Even if he was a peasant, in any case his purchase was unconnected with the peasants' right of pre-emption; for both our documents are utterly silent on this point, as if this right did not apply to escheats. Possibly Nicholas was in some way connected with the Peristerae monastery—at any rate it can be surmised that the land he bought eventually became its property; for this would explain how a document concerning his purchase came to be in the archives of the Peristerae monastery whence, apparently with other documents (ours, Nos. 1–3), it found its way into those of the Laura.

The extraordinarily low price at which the *epoptes* Thomas sold State lands is very striking. Nicholas paid a mere two *nomismata* for 100 *modii*, i.e. one *nomisma* per fifty *modii*. The land sold to the Peristerae monastery was at the same rate—it paid 36 *nomismata* for 1,800 *modii*.⁴¹ Unfortunately, we do not know the normal prices for land in the tenth century because no other contemporary source yields sufficient data. But the requisite information is available as regards later times, particularly the thirteenth century. The treatises of Byzantine surveyors published by Uspensky give the following prices for land: in the first treatise—1 *hyperpyron* for 1 *modius* of best, 2 *modii* of less good, and 3 *modii* of poor quality land; in the second treatise—1 *hyperpyron* for 1½ *modii* of best, 3½ *modii* of less good, and 7 *modii* of poor quality land.⁴² A study of the considerable material offered by thirteenth-century documents shows also that 1 *hyperpyron* was paid for 1 *modius* of best land, 2–3 *modii* of less good, and 5–10 *modii* of inferior quality land.⁴³ Taking into account that the thirteenth century Byzantine *nomisma* (in later terminology, *hyperpyron*) had only three-quarters of its nominal value, and that with the development of money-economy prices naturally tended to rise, it must still be said that the price paid for the escheated estates on Cassandra was extremely and surprisingly low. Data regarding the value of other commodities for which we have comparable material for the tenth and thirteenth centuries show that there was a natural increase in prices, but that, on the whole, the increase was not great and in no way sufficient to explain the very big difference between the thirteenth century prices for land and that fixed by the *epoptes* Thomas in the Laura

⁴¹ In both documents, apart from the sum paid for the land bought, the buyer is required to pay καὶ τὸ ὑπὲρ τῆς τοιαύτης γῆς δημόσιον εἰς τὴν καταβολὴν τῶν δώδεκα νομισμάτων, κατὰ τὸ ἀνηκόν σοι καὶ ἀναλογοῦν (Laura, No. 3, 24–6; No. 4, 13–14). The meaning of this sentence becomes clearer when it is compared to the *Treatise on Taxation*, edited by Ashburner, and very appropriately quoted by the editors of the Laura acts (Laura 9). It is stated there (ed. Ashburner, section 15 = ed. Dölger, 120, 12 ff.), that upon buying or receiving in gift escheated land the new owner was required to pay, for the drafting of the deed of sale or donation, a special tax, equivalent to 1/12th of the amount levied on the property before it became escheat: ἐάν τὸ κλᾶσμα διεπράθῃ ἢ ἐδωρήθῃ, τὸ μὲν παλαιὸν ψηφίον ἀπώλετο . . . προσεγράφετο δὲ ὑπὲρ ἐνὸς ἐκάστου νομίσματος τοῦ παλαιοῦ δημοσίου ἡλιβαλλικὸν δημόσιον νόμισμα δωδέκατον. Cf. also Ashburner, section 29 = Dölger 123, 15 ff. A similar meaning is implied, by the way, in the testimony of Theophanes in his famous narrative on the ten 'plagues' of the

Emperor Nicephorus I: he says, among others, that Nicephorus ordered a new census of taxpayers to be taken, tax rates to be increased, and a duty of 2 *keratia* levied on every entry in the taxpayers' roll: χαρτιστικῶν ἕνεκα ἀνὰ κερατίων β' (Theoph. 486, 28, ed. De Boor). Undoubtedly the 2 *keratia* were levied not on every taxpayer without discrimination as Bury, *Eastern Rom. Emp.* 214, n. 1, and Bratianu, *Études byz. d'hist. économique et sociale* (Paris, 1938), 202, seem to have understood: the 2 *keratia* was the rate of increase on every *nomisma* of the basic tax, which also works out at 1/12th. We have already put forward this conjecture (*Geschichte des byzantinischen Staates* 130); now on the basis of the above comparison we can assert it with confidence.

⁴² F. I. Uspensky, 'Byzantine Surveyors' (in Russian), *Trudy VI, Archaeol. Congress of Odessa* (1888) II, 278 and 304 ff.

⁴³ G. Ostrogorsky, 'Löhne und Preise in Byzanz,' *Byz. Zeitschr.* xxxii (1932), 312 ff.

deeds.⁴⁴ It can be added that, according to the Patmos *Praktikon* of 1073, the price for renting land was 1 *nomisma* for 10 *modii*.⁴⁵

Either Thomas simply sacrificed the interests of the Crown to those of the buyers, or else the very low level of prices fixed by him was due to the excessive amount of escheated lands sold simultaneously. Apart from the two Laura documents discussed (Nos. 3 and 4), both of which are dated August, 941, and show two lots of escheated land sold simultaneously on Cassandra, there is also a small group of documents connected with the Laura deed No. 5 which deal with a dispute between the monks of Athos and the inhabitants of Hierissos, also about escheated lands; the latter were situated in the district of the town of Hierissos, i.e. in the northern part of the peninsula of Athos, and had been bought by the inhabitants of the town. The same Thomas, *protospatharius*, *asekretes*, and *epoptes*, whom we have met with as the seller of the Cassandra escheats, was appointed to investigate the dispute. Three curious documents survive as a result of this lawsuit: (1) a sworn attestation of both the monks of Athos and the inhabitants of Hierissos that they will accept the boundaries proposed by Thomas (dated May, xv indiction)⁴⁶; (2) Thomas's report on the boundaries, effected⁴⁷; (3) the resolution of Katakalon, *strategos* of the theme of Thessalonica, published as No. 5 in the edition of the Laura deeds (dated August, 1 indiction).⁴⁸

It cannot be doubted that the first and second documents are of 942 (xv indiction), and the third of 943 (1 indiction)⁴⁹: like the Laura documents, Nos. 3 and 4, they belong to the reign of the Emperors Romanus, Constantine, Stephen and Constantine,⁵⁰ and mention the same *epoptes* Thomas, while the third names as witness Euthymius, abbot of Peristerae who bought from Thomas the escheated lands on Cassandra for his monastery.⁵¹ Considering that, in the first document, it is said that the inhabitants of Hierissos had bought the exempted land recently (πρὸ χρόνου τινός), it can be surmised that they bought it about the same time when the Peristerae monastery and Nicholas, son of Agathon, bought their holdings on Cassandra from the *epoptes* Thomas. Therefore, G. Rouillard is probably right in suggesting that a general order may have been issued about that time to sell all escheated lands in the theme of Saloniki.⁵² The great quantity of escheated lands on the peninsula of Chalcidice was probably due—as was often the case—to enemy invasion, namely to the famous Arab raid on Saloniki in 904, just about thirty years before the date of the deeds under consideration, and the Bulgarian incursions into the province of Saloniki that followed. At all events large sales of escheated land, which we are justified in assuming here, would inevitably bring down prices for land, and this may explain the strange fact that the *epoptes* Thomas sold land at the price of 1 *nomisma* for 50 *modii* (4 hectares).

Even at these exceptionally low prices, the land was beyond the peasants' reach:

⁴⁴ e.g., cf. data collected by us about prices for livestock, op. cit., 326 ff., and wheat, op. cit., 319 ff.

⁴⁵ Miklosich and Miller, *Acta graeca* IV, 15.

⁴⁶ P. Uspensky, *A History of Athos III* (Kiev, 1877, in Russian), 318–320. Reprinted in K. Lake, op. cit., 80–2.

⁴⁷ P. Uspensky, op. cit., 315–18; K. Lake, op. cit., 76–9.

⁴⁸ Alexander Lauriot, 'Athos Acts,' *Viz. Vrem.* v (1898), 485–6; K. Lake, op. cit., 82–4; *Laura*, No. 5.

⁴⁹ G. Rouillard, in her 'Note prosopographique et chronologique', *Byzantion* VIII (1933), 107 ff., has come to the same conclusion and so corrected the chronology given by K. Lake, op. cit., who dated the second document 881–2, and the third 882: Dölger, *Reg.* 504, too, had dated the third document 883. The correct chronology—although worked out in an unnecessarily complicated way and established on somewhat disputable foundations—had been given already by P. Uspensky, op. cit., 58 ff., who was wrong only in his calculation of the indiction, and dated the first and second documents 943 (instead of 942). Apparently the statement in

K. Lake, op. cit., 66, that Uspensky dates them 934 is a misprint.

⁵⁰ According to P. Uspensky, op. cit., 58 and 315, Thomas's report was drawn up under these Emperors, i.e. under Romanus I Lecapenus, Constantine VII, Porphyrogenitus, and Stephen and Constantine Lecapeni. Apparently—although P. Uspensky unfortunately gives no precise indication—this is stated in the initial part of the document not quoted by Uspensky, who had not succeeded in deciphering it satisfactorily. It seems that both G. Rouillard and K. Lake failed to notice this important remark, which would have simplified Rouillard's argument and preserved Lake from his erroneous chronological conclusions.

⁵¹ G. Rouillard, op. cit., 112, identifies this Euthymius with the abbot Euthymius mentioned in 897 in deed No. 1 of the Laura acts edited by her. It seems to us more natural to admit the existence of two other abbots of Peristerae called Euthymius besides St. Euthymius, its founder; for it does not appear likely that the same person could have been the abbot in 897 as well as in 943.

⁵² G. Rouillard, op. cit., 110.

as we have seen, the existence of escheated lands was due to the peasants being often unable to take possession of land deserted by their neighbours on the one condition of paying the taxation due on it. However low the price at which the lands referred to in the Laura documents may have been sold, it was considerably more than the tax-liability. According to the treatises of the thirteenth century Byzantine surveyors, quoted above, 1 *hyperpyron* was the tax levied on 48 *modii* of superior, or 100 *modii* of inferior land.⁵³ When comparing these rates with the prices paid in our documents for escheated land (1 *nomisma* for 50 *modii*), it should be borne in mind that the Byzantine *hyperpyron* of the thirteenth century was worth only about three-quarters of its initial value, and, moreover, that escheated estates must naturally have been inferior land: actually, it is even stated in document No. 3 that, of the 1,800 *modii* bought by the Peristerae monastery, 1,200 *modii* was uncultivated fallow land. Peasants would evidently find it difficult to buy derelict property requiring the investment of considerable working capital and labour. On the other hand, big landowners buying up such estates at a low price could bring them rapidly under cultivation and so increase their real property at no excessive cost. Land that had once slipped from the hands of peasants never returned to them. Peasant homesteads melted away, while the holdings of big landowners, including monasteries, grew unceasingly.

Even the very few documents of the Peristerae monastery at our disposal evoke a vivid picture of the rapid expansion of its holdings in land despite legislation opposed to the growth of large estates. We witness the monastery at Peristerae receiving land in gift and buying it from private individuals, buying escheated land for next to nothing from the State, with the result that during the short period of its existence it succeeded in accumulating considerable landed property. It owned land on the Bay of Thessalonica (No. 2), on the Cassandra peninsula (No. 3), and in the town of Saloniki itself (No. 1).

⁵³ F. I. Uspensky, 'Byzantine Surveyors' (in Russian), *Trudy VI, Archaeolog. Congress in Odessa* (1888) II, 306.